

1 GORENCE & OLIVEROS, P.C.  
 Robert J. Gorence, No. NM 981  
 2 Louren Oliveros, No. NM 14689  
 201 12<sup>th</sup> Street, NW  
 3 Albuquerque, NM 87102  
 Telephone: (505) 244-0214  
 4 Facsimile: (505) 244-0888  
 Email: [gorence@gopcfirm.com](mailto:gorence@gopcfirm.com)  
 5 Email: [oliveros@gopcfirm.com](mailto:oliveros@gopcfirm.com)

6 Attorneys for Plaintiff Love & Money, LLC  
 (formerly dba O.P.M.L.V., LLC)  
 7 (*Pro Hac Vice*)

8 HUNTERTON & ASSOCIATES  
 C. Stanley Hunterton, No. NSB 1891  
 9 Pamela R. Lawson, No. NSB 5044  
 333 South Sixth Street  
 10 Las Vegas, NV 89101  
 Telephone: (702) 388-0098  
 11 Facsimile: (702) 388-0361  
 Email: [shunterton@huntertonlaw.com](mailto:shunterton@huntertonlaw.com)  
 12 Email: [plawson@huntertonlaw.com](mailto:plawson@huntertonlaw.com)

13 Attorneys for Plaintiff Love & Money, LLC,  
 14 (Local Counsel)

15 **UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

16 PHASE II CHIN, LLC and LOVE &  
 17 MONEY, LLC (formerly dba O.P.M.L.V.,  
 LLC),

18 Plaintiffs,

19 v.

20 FORUM SHOPS, LLC, FORUM  
 DEVELOPERS LIMITED PARTNERSHIP,  
 21 SIMON PROPERTY GROUP LIMITED  
 PARTNERSHIP, SIMON PROPERTY  
 GROUP, INC., CAESARS PALACE CORP.,  
 22 and CAESARS PALACE REALTY CORP.

23 Defendants,

24 FORUM SHOPS, LLC,

Counterclaimant,

25 v.

CHIN LV, LLC,

26 Counter-Defendant.

Case No. 2:08-cv-00162-JCM-GWF

**REPLY BY PLAINTIFFS / COUNTER-  
 DEFENDANTS LOVE & MONEY, LLC  
 AND PHASE II CHIN, LLC TO SECOND  
 AMENDED COUNTERCLAIM BY  
 FORUM SHOPS, LLC**

1 Plaintiffs/Counter-Defendants LOVE & MONEY, LLC and PHASE II CHIN, LLC hereby  
2 reply to Second Amended Counterclaim by Forum Shops, LLC, as follows:

3 **REPLY TO SECOND AMENDED COUNTERCLAIM**

4 **REPLY TO GENERAL ALLEGATIONS**

5 1. Plaintiffs / Counter-Defendants Love & Money, LLC and Phase II Chin, LLC are  
6 without sufficient knowledge or information to form a belief as to the truth of the allegations of the  
7 first sentence of Paragraph 1 of the Second Amended Counterclaim. Plaintiffs / Counter-  
8 Defendants admit that Forum Shops is the lessor under that certain lease between Forum  
9 Development Limited Partnership and GGH Restaurant, LLC entered into on or about March 18,  
10 1997, as amended by the Lease Amendment entered into on or about October 9, 2003 and that the  
11 property which is the subject of the lease is located in the Forum Shops Mall in Las Vegas, Nevada.  
12 Plaintiffs / Counter-Defendants deny the remaining allegations of Paragraph 1 of the Second  
13 Amended Counterclaim.  
14

15 2. Plaintiffs / Counter-Defendants admit the allegations contained in Paragraph 2 of  
16 the Second Amended Counterclaim.

17 3. Plaintiffs / Counter-Defendants admit the allegations contained in Paragraph 3 of  
18 the Second Amended Counterclaim.  
19

20 4. Plaintiffs / Counter-Defendants admit that effective October 9, 2003, Forum Shops  
21 and Chinois entered into an amendment to the lease permitting Chinois to operate OPM in part of  
22 the leased premises Wednesdays through Sundays from 10:00 p.m. until 6:00 a.m. each following  
23 morning. Except as so admitted, Plaintiffs / Counter-Defendants deny the remaining allegations of  
24 Paragraph 4 of the Second Amended Counterclaim.

25 5. Plaintiffs / Counter-Defendants deny the allegations of the first sentence of  
26 Paragraph 5 of the Second Amended Counterclaim to the extent that they inaccurately construe  
27 the Amendment which, as a written document, speaks for itself. Plaintiffs / Counter-Defendants are  
28

1 without knowledge or information sufficient to form a belief as to the truth of the remaining  
2 allegations of Paragraph 5 of the Second Amended Counterclaim.

3 6. Plaintiffs / Counter-Defendants admit that Tom Kaplan wrote a letter to Gary Lewis  
4 on November 12, 2002, which document speaks for itself. Except as so admitted, Plaintiffs /  
5 Counter-Defendants deny the remaining allegations of Paragraph 6 of the Second Amended  
6 Counterclaim.

7 7. Plaintiffs / Counter-Defendants deny the allegations of Paragraph 7 of the Second  
8 Amended Counterclaim.

9 8. Plaintiffs / Counter-Defendants deny the allegations of Paragraph 8 of the Second  
10 Amended Counterclaim.

11 9. Plaintiffs / Counter-Defendants deny the allegations of Paragraph 9 of the Second  
12 Amended Counterclaim.

13 10. Plaintiffs / Counter-Defendants admit that Forum Shops sent a letter to Chinois  
14 dated March 6, 2006 which document speaks for itself and that more than thirty days have elapsed  
15 since that time. Except as so admitted, Plaintiffs / Counter-Defendants deny every remaining  
16 allegation of Paragraph 10 of the Second Amended Counterclaim.

17 11. In response to Paragraph 11 of the Second Amended Counterclaim, Plaintiffs /  
18 Counter-Defendants admit the lease contains a Section 13.1 which document speaks for itself.  
19 Except as so admitted, Plaintiffs / Counter-Defendants deny every remaining allegation of  
20 Paragraph 11.

21 12. In response to Paragraph 12 of the Second Amended Counterclaim, Plaintiffs /  
22 Counter-Defendants admit the lease contains a Section 13.1 which document speaks for itself.  
23 Except as so admitted, Plaintiffs / Counter-Defendants deny every remaining allegation of  
24 Paragraph 12.

1           13.     Plaintiffs / Counter-Defendants deny the allegations of Paragraph 13 of the Second  
2 Amended Counterclaim.

3           14.     In response to Paragraph 14 of the Second Amended Counterclaim, Plaintiffs /  
4 Counter-Defendants admits the lease contains a Section 18.1(h) which document speaks for itself.  
5 Except as so admitted, Plaintiffs / Counter-Defendants deny every remaining allegations of  
6 Paragraph 14.

7           15.     Plaintiffs / Counter-Defendants deny the allegations of Paragraph 15 of the Second  
8 Amended Counterclaim.

9  
10                           **REPLY TO FIRST CLAIM FOR RELIEF**  
11                                   **(Declaratory Judgment)**

12           16.     Plaintiffs / Counter-Defendants incorporate by reference each and every  
13 response to the foregoing paragraphs as if fully set forth herein.

14           17.     The allegations of Paragraph 17 of the Second Amended Counterclaim set forth  
15 legal conclusions to which no response is required. To the extent that Paragraph 17 includes  
16 allegations that require a response, the allegations are denied.

17           18.     The allegations of Paragraph 18 of the Second Amended Counterclaim set forth  
18 legal conclusions to which no response is required. To the extent that Paragraph 18 includes  
19 allegations that require a response, the allegations are denied.

20           19.     The allegations of Paragraph 19 of the Second Amended Counterclaim set forth  
21 legal conclusions to which no response is required. To the extent that Paragraph 19 includes  
22 allegations that require a response, the allegations are denied.

23           20.     The allegations of Paragraph 20 of the Second Amended Counterclaim set forth  
24 legal conclusions to which no response is required. To the extent that Paragraph 20 includes  
25 allegations that require a response, the allegations are denied.  
26  
27  
28

**REPLY TO SECOND CLAIM FOR RELIEF  
(Breach of Contract)**

21. Plaintiffs / Counter-Defendants incorporate by reference each and every response to the foregoing paragraphs as if fully set forth herein.

22. In response to Paragraph 22 of the Second Amended Counterclaim, Plaintiffs / Counter-Defendants admit the lease contains a Section 13.1 which document speaks for itself.

23. Except as so admitted, Plaintiffs / Counter-Defendants deny every remaining allegation of Paragraph 22.

24. Plaintiffs / Counter-Defendants deny the allegations of Paragraph 23 of the Second Amended Counterclaim.

25. Plaintiffs / Counter-Defendants deny the allegations of Paragraph 24 of the Second Amended Counterclaim.

26. The allegations contained in Paragraph 25 of the Second Amended Counterclaim are not directed to the Plaintiff / Counter-Defendant Love & Money, LLC and, as such, no response is required. To the extent that a response is required, Plaintiff / Counter-Defendant Love & Money, LLC denies the allegations contained in Paragraph 25 of the Second Amended Counterclaim. Plaintiff / Counter-Defendant Phase II Chin, LLC denies the allegations set forth in Paragraph 25.

27. Plaintiffs / Counter-Defendants deny the allegations of Paragraph 26 of the Second Amended Counterclaim.

28. Plaintiffs / Counter-Defendants deny the allegations of Paragraph 27 of the Second Amended Counterclaim and demands strict proof thereof.

**THIRD CLAIM FOR RELIEF**  
**Breach of Contract - L&M)**

29. Plaintiffs / Counter-Defendants incorporate by reference each and every response to the foregoing paragraphs as if fully set forth herein.

30. Plaintiffs / Counter-Defendants deny the allegations of Paragraph 29 of the Second Amended Counterclaim.

31. Plaintiffs / Counter-Defendants deny the allegations of Paragraph 30 of the Second Amended Counterclaim.

32. Plaintiffs / Counter-Defendants deny the allegations of Paragraph 31 of the Second Amended Counterclaim.

33. Plaintiffs / Counter-Defendants deny the allegations of Paragraph 32 of the Second Amended Counterclaim.

34. Plaintiffs / Counter-Defendants deny the allegations of Paragraph 34 of the Second Amended Counterclaim.

**REPLY TO FOURTH CLAIM FOR RELIEF**

35. Plaintiffs / Counter-Defendants incorporate by reference each and every response to the foregoing paragraph as if fully set forth herein.

36. Plaintiffs / Counter-Defendants deny the allegations of Paragraph 35 of the Second Amended Counterclaim.

37. Plaintiffs / Counter-Defendants deny the allegations of Paragraph 36 of the Second Amended Counterclaim.

38. Plaintiffs / Counter-Defendants deny the allegations of Paragraph 37 of the Second Amended Counterclaim.

39. Plaintiffs / Counter-Defendants deny the allegations of Paragraph 38 of the Second Amended Counterclaim.

1           40.     Plaintiffs / Counter-Defendants deny the allegations of Paragraph 39 of the  
2 Second Amended Counterclaim.

3           41.     Plaintiffs / Counter-Defendants deny the allegations of Paragraph 40 of the  
4 Second Amended Counterclaim.

5                                   **REPLY TO FIFTH CLAIM FOR RELIEF**

6           42.     Plaintiffs / Counter-Defendants incorporate by reference each and every  
7 response to the foregoing paragraph as if fully set forth herein

8           43.     Plaintiffs / Counter-Defendants deny the allegations of Paragraph 42 of the  
9 Second Amended Counterclaim.

10          44.     Plaintiffs / Counter-Defendants deny the allegations of Paragraph 43 of the  
11 Second Amended Counterclaim.

12          45.     Plaintiffs / Counter-Defendants deny the allegations of Paragraph 44 of the  
13 Second Amended Counterclaim.

14          46.     Plaintiffs / Counter-Defendants deny the allegations of Paragraph 45 of the  
15 Second Amended Counterclaim.

16          47.     Plaintiffs / Counter-Defendants deny the allegations of Paragraph 46 of the  
17 Second Amended Counterclaim.

18                                   **AFFIRMATIVE DEFENSES**

19                                   **FIRST AFFIRMATIVE DEFENSE**

20           48.     The Counterclaim, in whole or in part, fails to state a claim for which relief can  
21 be granted.

22                                   **SECOND AFFIRMATIVE DEFENSE**

23           49.     Counterclaimant's claims are barred, in whole or in part, by the doctrine of  
24 waiver.

**THIRD AFFIRMATIVE DEFENSE**

50. Counterclaimant's claims are barred, in whole or in part, by the doctrine of estoppel.

**FOURTH AFFIRMATIVE DEFENSE**

51. Counterclaimant's claims are barred, in whole or in part, by the doctrine of laches.

**FIFTH AFFIRMATIVE DEFENSE**

52. The Counterclaim fails to meet the standard of issuance of a declaratory judgment under applicable law.

**SIXTH AFFIRMATIVE DEFENSE**

53. Counterclaimant is not entitled to attorney's fees under the lease.

**SEVENTH AFFIRMATIVE DEFENSE**

54. Counterclaimant's claims are barred, in whole or in part, by its own contractual breaches.

**EIGHTH AFFIRMATIVE DEFENSE**

55. Plaintiffs / Counter-Defendants did not breach any legal duty to Counterclaimant under the Lease, the Amendment, or otherwise.

**NINTH AFFIRMATIVE DEFENSE**

56. Counterclaimant's claims are served, in whole or in part, by the applicable statute of limitations.

**TENTH AFFIRMATIVE DEFENSE**

57. Counterclaimant's claims are barred, in whole or in part, by the doctrine of unclean hands.

**ELEVENTH AFFIRMATIVE DEFENSE**

58. If Counterclaimant was injured and damaged as alleged, which is specifically denied, then the injury and damages were caused, in whole or in part, by the acts or omissions of others, whether individual, corporate or otherwise, whether named or unnamed for whose conduct Plaintiffs / Counter-Defendants are not responsible.

**TWELFTH AFFIRMATIVE DEFENSE**

59. If Counterclaimant was injured and damaged as alleged, which is specifically denies, then the injuries and damages resulted from an independent, intervening and/or superseding cause or causes for which Plaintiffs / Counter-Defendants are no responsible.

**THIRTEENTH AFFIRMATIVE DEFENSE**

60. Counterclaimant's claims are barred, in whole or in part, by the doctrine of acquiescence.

**FOURTEENTH AFFIRMATIVE DEFENSE**

61. Counterclaimant's claims are barred, in whole or in part, by the doctrine of ratification.

**FIFTEENTH AFFIRMATIVE DEFENSE**

62. Plaintiffs / Counter-Defendants currently have insufficient knowledge or information upon which to form a belief as to whether it may have other, as yet unstated, affirmative defenses available and therefore reserve the right to assert additional affirmative defenses.

**SIXTEENTH AFFIRMATIVE DEFENSE**

63. No conduct of Plaintiffs / Counter-Defendants was either the legal cause or the cause in fact of the alleged harm for which Counterclaimant seeks relief.

WHEREFORE, Plaintiffs / Counter-Defendants pray for relief as follows:

A. That Counterclaimant Forum Shops, LLC take nothing by way of its Counterclaim and that judgment be entered in favor of Plaintiffs / Counter-Defendants Love & Money, LLC and Phase II Chin, LLC;

B. For an award of attorneys' fees and costs; and

C. For such other and further relief as the Court may deem just and proper.

Dated this 10<sup>th</sup> day of November, 2009.

Respectfully submitted,

**GORENCE & OLIVEROS, P.C.**

/s/ E-filed 11/10/09

Louren Oliveros, No. NM 14689

Robert J. Gorence, No. NM 981

201 12<sup>th</sup> Street, NW

Albuquerque, NM 87102

*Attorneys for Plaintiff Love & Money, LLC*

(formerly dba O.P.M.L.V., LLC)

(*Pro Hac Vice*)

C. Stanley Hunterton , No. NSB 1891

Pamela R. Lawson, No. NSB 5044

HUNTERTON &amp; ASSOCIATES

333 South Sixth Street

Las Vegas, NV 89101

*Attorneys for Plaintiff Love & Money, LLC*

*(Local Counsel)*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 10<sup>th</sup> day of November, 2009, I emailed a true and correct copy of the foregoing **REPLY BY PLAINTIFFS / COUNTER-DEFENDANTS LOVE & MONEY, LLC AND PHASE II CHIN, LLC TO SECOND AMENDED COUNTERCLAIM BY FORUM SHOPS, LLC** as follows:

Samuel S. Lionel  
Charles H. McCrea, Jr.  
LIONEL SAWYER & COLLINS  
1700 Bank of America Plaza  
300 South Fourth Street  
Las Vegas, Nevada 89101  
[cmccrea@lionelsawyer.com](mailto:cmccrea@lionelsawyer.com)  
[slionel@lionelsawyer.com](mailto:slionel@lionelsawyer.com)

*Attorneys for Defendants Forum Shops, LLC, Forum Developers Limited Partnership, Simon Property Group Limited Partnership and Simon Property Group, Inc.*

Steve Morris  
MORRIS PETERSON  
900 Bank of America Plaza  
300 So. Fourth Street  
Las Vegas, Nevada 89101  
[sm@morrislawgroup.com](mailto:sm@morrislawgroup.com)

Jason Bowles  
B.J. Crow  
BOWLES & CROW  
201 Third Street, N.W., Suite 1370  
P.O. Box 25186  
Albuquerque, NM 87125-5186  
[jason@bowlesandcrow.com](mailto:jason@bowlesandcrow.com)  
[bj@bolwesandcrow.com](mailto:bj@bolwesandcrow.com)

*Attorneys for Plaintiff Phase II Chin, LLC*

/s/ E-filed 11/10/09

Louren Oliveros  
Gorence & Oliveros, P.C.